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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Federal-State Joint Board of Universal Service	)	**CC Docket No. 96-45**
	)	
Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming	)	

PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

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PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

Chugwater Telephone Company(Chugwater), Range Telephone Cooperative, Inc. (Range), and RT Communications, Inc. (RT Communications, referred to collectively as Independents, or Petitioners herein), submit this Petition for Reconsideration and/or Clarification (Petition) in the above referenced proceeding. The Independents are rural incumbent local exchange companies, operating within the state of Wyoming, that are adversely impacted by the Commission's decision to grant Eligible Telecommunications (ETC) status to Western Wireless in Wyoming.

I. INTRODUCTION

On December 26, 2000, the FCC released its Memorandum Opinion and Order in CC Docket No. 96-45. [1] That Order grants Western Wireless Corporation's Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming. The Independents are each directly or indirectly adversely affected by the Order. The Order is contrary to the Telecommunications Act of 1996 ("Act", herein) in that ETC status was granted contrary to the Act. This is particularly egregious in that action was taken without

[1] *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming,* CC Docket No. 96-45, DA 00-2896, rel. December 26, 2000.

appropriate notice to the Petitioners, contrary to rights guaranteed them by federal statute and regulation.

II. DISCUSSION OVERVIEW

The Independents have several issues with this order that need further reconsideration and/or clarification. Specifically, the FCC has not adequately addressed the applicable criteria of public interest; it has left questions open as to how support will be provided and what will be supported to Western Wireless; it has allowed expansion of the original request, denying due process to companies within Wyoming; and has effectively rendered any state legislation proposed in the current session of the Wyoming legislature moot. In addition, this Order effectively nullifies any of the mechanisms established in the 1996 Telecommunications Act as well as any state statutes that protect customers in rural areas. The number of customers per square mile in Wyoming ranks 49th in the nation (only Alaska has lower population density[2]), making it the least populated state in the lower 48 states. Wyoming has an average cost per loop that ranks 50th, making it the most costly state in the Union to serve. (Wyoming's loop costs are more than 16% higher than Alaska and 26% higher than the next highest state – Montana[3]).

In granting Western Wireless ETC status, the FCC has focused on a second provider and the offering of a second type of technological choice, without considering the public interest examining if such services would advantage some while disadvantaging others. The end result of rural Wyoming customers without service nullifying the provisions of the 96 Act.

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[2] *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, FCC 00-J-4 (released December 22, 2000); *Letter of William R. Gillis, Rural Task Force to Magalie Roman Salas, Secretary, Federal Communications Commission,* CC Docket 96-45 (September 29, 2000), *Rural Task Force Report, White Paper 2,* page 21, released January, 2000.
[3] Universal Service Fund 2000 Submission of 1999 Study Results by the National Exchange Carrier Association, Inc. (NECA), September 29, 2000.

ETC Determination by the State

In determining the public interest issues associated with the designation of multiple carriers in a rural area, the Telecommunications Act of 1996 recognizes that state agencies were the appropriate forum to make these decisions.[4] State Commissions have a more intimate knowledge of the particular circumstances inherent in providing services to telecommunications users in the state and have a vested interest in ensuring that all users have service. Further, the Act appropriately identified that rural providers are in a much different situation than non-rural providers and that the reviewing Commission should grant ETC status in rural areas only after public interest criteria are satisfied.[5] The circumstances of each particular situation provider must be examined before a determination of the public interest that meets the Act criteria is reached.

Currently, Wyoming has a bill pending before the state legislature that would rectify the inability of the Wyoming Commission to determine and establish ETC designation. This bill, HB0052, is provided as Exhibit1, and is expected to be passed within the next two months. However, should the FCC uphold the current order, the bill and the Wyoming Commission's subsequent ability to examine the public interest, in this case and future ETC cases, could be rendered moot. On the basis of this premise, the Independents request the Commission to reconsider this order and remand the decision to the Wyoming Public Service Commission, with its new authority to be granted by HB0052. Indeed, by the time this request is reconsidered, the appropiate authority will be in place.

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[4] 47 U.S.C. § 214(e)(2)
[5] Id

Due Process Considerations

Petitioners would also like clarification and reconsideration of the exact exchanges to which the FCC has granted ETC status to Western Wireless. The Commission's Order[6] identifies the exchanges for which it granted ETC status to Western Wireless. This list of designated exchanges is substantially different from that requested by Western Wireless in their initial application.[7] An expanded list of exchanges was made through an ex-parte filing on December 20, 2000.[8] This ex-parte filing resulted in the addition of 16 exchanges and another rural exchange carrier, RT Communications to the original list of exchanges requested. Notification of this expansion was not provided to the Wyoming Telecommunications Association (WTA) attorney, a party of record, nor to RT Communications, the exchange company impacted, by the ex-parte communication. The FCC adopted the order on December 22, 2000 two days from the filing of the ex-parte exchange. This deprived the impacted carrier of its due process, as there was no ability for this carrier to file comments. The lack of due process in this instance mandates that the Commission reconsider the grant of ETC status of Western Wireless for the exchanges improperly added to the petition.

It should be noted that in the petition made by Western Wireless before the Wyoming Commission, Western Wireless indicated an inability to serve a number of these exchanges.[9] A Western Wireless representative, testified that the company could provide service only

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[6] *Memorandum Opinion and Order In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming,* CC Docket No. 96-45, DA 00-2896, rel. December 26, 2000, footnote 66.

[7] *In the Matter of Western Wireless Corporation, Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming,* CC Docket No. 96-45, September 29, 2000, Exhibit D.

[8] Ex Parte by Western Wireless filed December 20, 2000.

[9] See Western Wireless Testimony of Gene Dejordy filed May 13, 1999 before the Wyoming Public Service Commission, *In the matter of WWC Holding Co., Inc. Petition for Designation as an Eligible Telecommunications Carrier*. Pages 7, 19-22 and exhibits A and B.

in the following counties: Albany; Campbell; Carbon; Converse; Crook; Fremont; Goshen; Johnson; Laramie; Lincoln; Natrona; Niobrara; Platte; Sheridan; Sublette; Sweetwater; Teton; Uinta; and Weston. Other counties served by RT Communications are not included in Western Wireless' coverage area. (See Exhibit 3). Obviously, this was the reason that Western Wireless did not include these exchanges in its application. If this situation has changed and RT is to be included, the company deserves the right to provide comments. RT is a separate company from the Range Cooperative and should be treated as such even though they have a combined study area for interstate settlement purposes. Range and RT are independently operated and have individual and specific circumstances. If the situation has not changed, then the Commission has authorized ETC status to Western Wireless when it cannot provide services, thus indicating a failure to meet the criteria of providing universal service. [10]

Eligibility for Initial and Continued Support

Clarification is needed for two main eligibility issues inherent in the granting of ETC status to Western Wireless. First, clarification is requested as to how the Commission will determine continued eligibility is applicable for Western Wireless. Continued eligibility requires that a regulatory body determine if Western Wireless 1) meets the USF requirements in terms of buildouts to all of the customers in a designated ETC area; and, 2) utilizes support for the intended purposes.[11]

The FCC states that Western Wireless' ETC status, "may be revoked if the carrier fails to comply with the statutory ETC and common carrier obligations."[12] While the FCC has indicated in their Declaratory Ruling released August 10, 2000, that ETC designation

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[10] 47 U.S.C. § 214(e)(1)(A)
[11] 47 CFR § 54.7, §54.101 and § 54.201
[12] Ibid. para. 13

should not require the ability to service 100% of the granted area before ETC designation is allowed, they have also recognized that "the state may revoke a carrier's ETC designation if the carrier fails to comply with the ETC eligibility criteria."[13] Essentially, this has indicated that the state will verify that the intended buildouts and services supported in ETC designated areas actually occur or are provided. If it does not, then the state has the right or obligation to rescind the ETC designation. Unfortunately, as is evidenced through the filing of this instant application, the Wyoming Public Service Commission does not currently have this authority. The FCC therefore, needs to indicate how they will ensure that buildouts occur or interconnection agreements are in place and the services are indeed supplied in these areas. No mechanism has been identified, and to the Petitioners' knowledge, no information about current facilities placement or capability has been provided in this proceeding. The Independents would suggest that some baseline of information regarding the facilities and capabilities of Western Wireless should be established to determine whether they are indeed proceeding toward the ability to serve 100% of the affected markets.

Additionally, clarification is needed as to how certification as outlined in the Commission's Ninth Report and Order released November 2, 1999 in CC Docket No. 96-45 will be made. Part F of this Order[14] indicates that non-rural carriers must have state certification that support is used for the intended purpose.[15] This certification is required each year or carriers cannot receive USF support from USAC. The Order also indicates that "We conclude that providing federal universal service high-cost support in the form of carrier revenue, to be accounted for by states in their ratemaking process, is an appropriate mechanism by which to ensure that non-rural carriers use high-cost support only for the

[13] Id para. 15
[14] Ibid para. 95
[15] 47 CFR § 54.313

'provision, maintenance and upgrading of facilities and services for which the support is intended, '....''[16] The Order specifically recognizes that the states have the ability **through the rate making process** to ensure that support is indeed used for the intended purposes. This presents two problems. Again, the Wyoming Commission does not currently have the authority to make this required certification in non rural areas and, the Wyoming Commission does not have any rate making authority over Western Wireless to use in ensuring USF support is treated appropriately. Although these certification requirements are not currently in effect in rural areas, it is reasonable to conclude that the result of the rural task force recommendation and subsequent order by the Commission will contain such provisions. Clarification of these issues is needed within this proceeding.

The second question relating to eligibility revolves around services that are eligible for support. Currently, multiple sets of definitions and rules exist for providers within the same service area. Because there are multiple sets of definitions and rules, there is no level playing field nor even a commonly defined service which the market players are providing. Western Wireless, as a CMRS provider, has contended that they are not subject to many of the regulatory requirements that the ILECS are required to meet and that they can provide a different set or combination of services. Western Wireless has indicated that their service may include expanded calling scopes and the inclusion of vertical features such as custom calling.[17] Consideration should be made by the Commission of what is and is not included in the support that is provided through the Universal Service Fund. Local calling scopes are a primary example of this need to address this issue. Supported services need to be defined as to the provision of service within a geographical area such as an exchange or whether they

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[16] Ibid para. 95
[17] Ibid page 24

are allowed to include expanded calling areas.

To assure equity between the two separate technologies, wireline and wireless, a consistent treatment must be applied in supporting services. Today the criteria for Universal Service does not include Extended Area Service (EAS -or expanded calling areas). If wireless providers are allowed to include expanded calling areas in their supported services, then wireline companies must also be afforded this support. Similar consideration should be given to bundled services that include vertical features and functioning. Clarification is requested as to how the contribution and support mechanism will equalize the inequities of the different local calling scopes and vertical features bundled with universal service rates offered by Western Wireless. If support is not intended for these types of services, then the FCC must identify how it will isolate the cost for supported services from the costs of non-supported services.

Clarification is also requested as to which customers will be included in the definition of supported customers. The Order states that, "Competitive ETCs will receive universal service support only to the extent that they acquire customers." [18] The FCC makes the assumption that competitive ETCs will offer a service package comparable in price and quality to the ILEC.[19] Western Wireless however, may offer different services packages that are either "fixed" in nature or "mobile" in nature. This may be an issue for the purposes for declaring them as local exchange or supported services. The FCC should also clarify what support should be provided should Western Wireless add a new customer that was not "acquired" from incumbents. With the issuance of this Order Western Wireless has the potential of submitting every new customer establishing service to USAC as eligible for USF

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[18] Ibid. para. 13.
[19] Id.

support. Ultimately, they could terminate and reestablish all existing customers, making them eligible for support.

Finally, it should be clarified that Western Wireless must provide and advertise a lifeline service. Although paragraph 10 of the Order has outlined the services they must provide, lifeline service has not been identified. The FCC should also comment on how lifeline service should be provided and support recovered from USAC as it is Petitioners' understanding that Western Wireless does not charge a subscriber line charge (SLC). The SLC is waived under current ILEC lifeline programs and is a fundamental element of lifeline recovery. The method by which this service will be offered and treated by the FCC and USAC needs clarification.

Empirical Evidence

The WTA's comments provided in response to the Western Wireless application[20] identified numerous public interest considerations. These included, but were not limited to, the potential for: customers left without essential services; customers left without access to advanced services; increases in rates for rural customers; the lack of "sufficient and predictable" USF support; and the lack of competitive neutrality. [21] Notwithstanding this record, the Commission has indicated that:

> While we recognize that some rural areas may in fact be incapable of sustaining more than one ETC, no evidence to demonstrate this has been provided relating to the requested service areas. We believe that such evidence would need to be before us before we could conclude that it is not in the public interest to designate Western Wireless as an ETC for those areas served by rural telephone companies.[22]

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[20] Comments filed by WTA, *In the Matter of Western Wireless Petition for Designation as an Eligible Telecomunications Carrier In the State of Wyoming*, CC Docket No. 96-45, DA 00-2896,
[21] Comments filed by WTA, *In the Matter of Western Wireless Petition for Designation as an Eligible Telecomunications Carrier In the State of Wyoming*, CC Docket No. 96-45, DA 00-2896,
See HB0052 before the Wyoming Legislature
[22] Ibid para. 22

While the Commission appears to desire specific details and numbers relating to instances outlining these effects, the lack of due process mentioned above is germane to this issue. Furthermore, the Commission should consider the lack of publicly available information and the refusal of Western Wireless to supply information directly to the Interveners regarding Western Wireless' proposals and offered services. This informational void was addressed in our initial comments. [23]

The Independents request reconsideration be given to the determination of the public interest; for the reasons stated both in their initial comments as well as those provided herein. To summarize, Petitioners argue that these issues are more appropriately handled at the state level where the public interest can be more finely addressed in light of specific circumstances. Proposed legislation currently before the State Legislature would accomplish such a goal. However, the decision by the Commission defeats this legislation and renders the 96 Act void.

As detailed in the balance of this Petition, the Independents would offer the following reasons as the basis for reconsideration and reversal of the Commission's decision designating Western Wireless as an ETC.[24]

Chugwater Telephone

Chugwater Telephone is a small telephone company located midway between Cheyenne and Wheatland. It is comprised of a three-person operation (Manager; Plant Technician; and Combination Bookkeeper & Business Office Representative), which serves approximately 290 customers over a 900 square mile area (or about 0.3 customers per square mile). Given its relative size and with the composition of its workforce, the Company cannot

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[23] Ibid page 7/8
[24] Ibid para. 26 and 27
See HB0052 before the Wyoming Legislature

legitimately reduce costs in any significant manner should it be subject to competition. Chugwater currently meets the criteria necessary to receive universal service support.

Jeopardy to Essential Services.

Granting ETC status to Western Wireless may directly impact the rates paid by customers in Chugwater's service area or even leave them without basic dial tone. As the Company's market is eroded, its earnings will drop necessitating increases in its rates or ultimately withdrawing from the market. As Petitioners do not know what level of market erosion might occur, the following scenarios assuming a market loss of 20%, 30% and 40% are provided[25]. Should Western Wireless gain a significant portion of the market, Chugwater would either be unable to remain financially viable or would have to raise local service rates for its remaining customers. Given revenue losses associated with market share loss, Chugwater would need to increase local service rates for the remaining customers by 48%, 120% and 216% respectively, in order to maintain a compensatory return. Should Chugwater not be able to increase these local rates and if Western Wireless is not able to provide services to these remaining customers, there is a very real potential that these customers would be without dial tone. No time frame or capability has been provided by Western Wireless detailing whether they could provide services given this potentiality. Clearly provided in the Section 254(b)(1) of the Act is the requirement that quality services should be available at just reasonable, and affordable rates. As the Order defeats this important element of the Telecommunications Act, it must be overturned.

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[25] Please note that this revenue loss reflects the prospective percentage loss in local, intrastate access, and Federal USF revenue only. Interstate revenues were held constant as these revenues are based upon cost and we have assumed are costs will remain even in the face of lost customers.

Availability of Advanced Services.

In addition, Sections 254(b)(2) and (3) both require access to advanced services. Approximately one-third of the customers currently served by the Company utilize facsimile/ Internet connections or both. The ability of cellular carriers to provide these services adequately is in question. The ability of these carriers to provide advanced services such as DSL is even more limited. The Order did not address these failings.

Although these services are not supported by the USF mechanism, the ability to carry them is supported in the backbone infrastructure and is a principle of the USF support mechanism as stated in the Act.[26] A portion of the cost of the USF mechanism is designed to promote a network whereby advanced services can be supplied to rural areas. This cost is incorporated into the support provided to Chugwater through their cost of service as reported to USAC. Because the USF mechanism allows Western Wireless to receive the same support as the incumbent, they will be paid for this capability, even though they do not provide this level of supported services. The adverse result is twofold: 1) customers in the Company's service area may be deprived of the availability for advanced services; and 2) Western Wireless will be paid for a capability they do not render.

The FCC has been apprised of this situation in other proceedings, such as the petition by the Kansas Independent Telcos for designation of Western Wireless' service as "fixed" cellular and not CMRS services.[27] RUS comments in this related proceeding are very applicable in this instant reconsideration petition and should be included in the record here. A copy of the RUS comments in this referenced proceeding, which identify the

[26] See section 254(b)(2) of the 1996 Telecommunications Act.

[27] *In the Matter of Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Carrier and the Federal State Joint Board on Universal Service,* WT Docket No. 00-239 and CC Docket No. 96-45, rel. November 3, 2000

potential harm to rural areas, are attached as Exhibit 2.

RT Communications

RT Communications is a telephone company with three primary locations within Wyoming: 1) the southeast corner; 2) the northeast corner; and 3) the north-central portion of the state. RT serves approximately 16,400 customers over a 9,825 square mile area (or about 1.7 customers per square mile). RT also provides these services over 4,940 route miles of cable, which equates to an average of three and one-third customers per route mile of plant. It is generally felt that anything less than five customers per route mile is too few to justify an investment. RT operates at a very efficient level and given its size and demographics, the Company cannot legitimately reduce its operating costs in any significant manner should it become subject to competition.

Modified Investment and Service Practices.

Under a competitive environment, RT cannot continue several of its business practices which have allowed the Company to provide quality services to its rural customers. The FCC has assumed that the advent of competition will promote investment in rural areas. In reality, however, many of the investments that the Company has made since its inception in 1994 would not have been made in a competitive marketplace. The Commission has failed to recognize the simple economic theory that competition does not reduce rates for all customers, but rather drives the price of service to its cost. This could result in a loss of service to high cost rural customers.

RT has expended almost $35 million to upgrade its facilities since it closed the sale on its exchanges at the end of 1994. This is equivalent to the entire value of the net plant that it acquired. It should be noted that the company, which divested itself of these exchanges, did not make these necessary investments to upgrade facilities and divested itself of them, as it was not practical from a business standpoint to do so. It must also be noted that the Company made many of these investments because of a mandate from the Wyoming Commission.

At this point, it is relevant to review the historical context for rural companies in Wyoming. These companies began providing service because larger or profit-seeking companies did not find it prudent to supply services in these sparsely populated areas. In order for customers in these areas to have any telecommunications service, cooperatives were formed or small family owned companies were established. These cooperatives and family owned companies focused on bringing quality services to the people who were their neighbors. Investment emphasis has been, and continues to be, on quality and service and not primarily on profit motivation. The result has been that these companies have invested in services and infrastructure that a purely profit-driven company would consider imprudent. Customers have been afforded better service than can be possible under a competitive environment.

Prior to the issuance of this Order, RT had investment plans for over $9 million, which it has put on hold, will cancel, or redirect as a partial result of this order. Several rural upgrade projects that would have upgraded outdated plant, replaced open wire, and placed rural fiber will be reconsidered. These investments will not be made to facilitate better quality service to a relatively few high cost customers, instead, it will be directed toward greater revenue producing areas and services with higher earning potential. Such is necessary to meet competition in these areas.

As an example, RT serves a rural area in the center of Wyoming consisting of two exchanges, Jeffery City and Gas Hills. These exchanges are 45 to 60 miles from any town of any size or even a major road. They have 38 and 130 customers respectively. RT has invested almost $1.3 million in these two exchanges, or about $7,700 per customer since they were acquired in 1994. This investment was ordered by the state commission and does not represent an independent decision by the company. Under the marketplace established by this order, RT would have redirected such investment to advanced services and better quality services where it is more likely to face competition.

Additionally, the following is provided as an example of the impact on individual customers. RT serves the small community of Albin in the Southeast corner of the state. A recent request by one of its residents has come in for a second line to his home. This second line is needed, as the individual is responsible for monitoring the alarm systems at the local school. The facilities provided by the previous owner of this exchange constituted a single drop from the end of the distribution cable to the premise. The distance of this drop facility is over 2,500 feet. RT estimates that the cost to install a replacement drop for this customer would be in the neighborhood of $5,000. Prudent business practice would dictate that the company cannot make this amount of investment for this single customer. It should be noted that there is a connection, but that it is insufficient to meet the requirements of the customer in this instance. It should also be noted that wireless service may not have the data capability to provide the service for this circuit. The customer, as a direct result of this Commission Order, will be without any provider for this service.

Sufficient and Predictable USF.

USF support is neither sufficient nor predictable in the situations described above. In the past, RT would have made this investment as the Company's focus was on delivering the universal services needed by its customers. Under the decision implemented in this case, the Company cannot afford to make this investment.

Support is not predictable or sufficient for two reasons. First, even should RT make this investment, the current support mechanism allows a competitor such as Western Wireless to receive the average of the incumbent. The $5,000 investment for this one customer or the $7,700 per customer in Jeffery City/Gas Hills would be averaged with all of the Company's customers over the state. Should a competitive provider take a low cost customer in these exchanges or even in other exchanges, the result would be that some of this $5,000/$7,700 which should get support would go to the other provider. In addition, the other provider, who may not be capable of providing data services inherent in these costs, would receive support for capability they are not providing. The result is that the support provided by the USF is insufficient for these customers.

Second, in order to recover this investment, the Company would have to retain this customer for an extended period of time to recover this investment (even with support from the high cost fund). Should another provider take this customer before the investment could be recovered, the company would lose this stranded investment. The Company would have to either modify its construction practices; imposing higher amounts in aid to construction or set extended term limits for service (i.e. 10 year service requirements). Either of these solutions results in increased risk transferred to the end user. USF in this instance is not predictable.

Jeopardy to Essential Services.

Granting ETC status to Western Wireless may directly impact the rates paid by customers in RT's service area or even leave them without basic dial tone. As the Company's market is eroded, its earnings will drop necessitating increases in its rates or ultimately withdrawing from the market. As it is not known what level of market erosion might occur, estimates assuming a market loss of 20%, 30% and 40%.[28] are provided. Evident from the information below is the fact that should Western Wireless gain a significant portion of the market, RT would either be unable to remain financially viable or would have to raise local service rates for its remaining customers.

Given these losses in market share, RT would need to increase local service rates for the remaining customers by 89%, 201% and 311% respectively in order to maintain a compensatory return. Should RT not be able to increase these local rates and if Western Wireless is not able to provide services to these remaining customers, then there is a very real potential that these customers would be without dial tone "universal" services. Clearly provided in the Section 254(b)(1) of the Act is the requirement that quality services should be available at just reasonable, and affordable rates. The Commission's Order has jeopardized universal service contrary to the Act.

Availability of Advanced Services.

In addition, Section 254(b)(2) and (3) both refer to access to advanced services. RT estimates that 40% of the customers currently served by the Company utilize facsimile /Internet connections or both. The ability of cellular carriers to provide these services is not proven in today's deployments. The ability of these carriers to provide advanced services such as DSL is even more limited. Although these services are not supported directly by the USF mechanism, the ability to provide them is. A portion of the cost of the USF mechanism is designed to promote a network whereby advanced services can be supplied to rural areas. This cost is incorporated into the support provided to RT through their cost of service as reported to USAC. Because the USF mechanism allows Western Wireless to receive the

[28] Please note that this revenue loss reflects the prospective percentage loss in local, intrastate access, and Federal USF revenue only. Interstate revenues were held constant as these revenues are based upon cost and we have assumed are costs will remain even in the face of lost customers.

same support as the incumbent, they will be paid for this capability, even though they do not provide this level of supported services. The result is twofold: 1) customers in the Company's service area may be deprived of the availability for advanced services; and 2) Western Wireless will be paid for a capability that they do not render.

The FCC has been appraised of this situation in other proceedings such as the petition by the Kansas Independent Telcos for designation of Western Wireless' service as "fixed" cellular and not CMRS services. RUS comments in this related proceeding are very applicable in this instance and should be included in the record here. A copy of the RUS comments in this proceeding, which identify the potential harm to rural areas, are attached as Exhibit 2.

Range Telephone Cooperative

Range Telephone Cooperative is a telephone company with operations in Wyoming and Montana. Its Wyoming operations are located in the Northeast corner of the state. It serves approximately 2,235 customers over a 3,050 square mile area (or about 0.73 customers per square mile). Range provides these services over 2,047 route miles of cable, which equates to an average of 1.09 customers per route mile of plant in an industry where anything less than 5 is as a rule of thumb is perceived as too few to justify the investment. Range operates at a very efficient level and given its size and make up, the Company cannot legitimately cut costs in any significant manner should it be subject to competition.

Modified Investment and Service Practices.

Under a competitive environment, Range cannot continue several of its business practices, which have allowed the Company to provide quality services to its rural customers. The FCC has assumed that the advent of competition will promote investment in rural areas. In reality, however, many of the investments that the Company has made over the last several years would not have been made in a competitive marketplace. Range has expended over $5.175 million to upgrade its facilities since 1995. This is equivalent to approximately 88% of the net plant that it had at the end of 1999. It must be noted that the Company made many of these investments at the order of the Wyoming Commission.

At this point, it would seem prudent to briefly describe the history of Range as well as most of the rural companies in Wyoming. Range comes from an environment where larger or profit-seeking companies did not find it prudent to supply services in the sparsely populated areas it now serves. In order for customers in these areas to have any service provision, the Range Cooperative was formed. Range focused on bringing quality services to the people who were their neighbors. Investment emphasis has been, and continues to be, on quality and service and not primarily on profit motivation. The result has been that these companies have invested in services and infrastructure that a purely profit-driven company would consider imprudent. Customers have been afforded better service than can be possible under a competitive environment.

Prior to the issuance of this order, Range had investment plans for over $1.5 million, which it has put on hold, will cancel, or redirect as a result of this order. A good portion of this investment was to install fiber facilities from the Range corner of the state to the world. This rural area has previously had its only connection to the outside world through a microwave service provided by the incumbent Bell Operating Company. This current facility is at exhaust and results in an inability to provide any new special circuits and a heavy number of busy signals on toll calls. Without this investment, many of the customers in Northeast Wyoming will have degraded connections to the remainder of Wyoming and the United States, and/or will not be able to get the types of special access services they required for their data needs. This investment will be reevaluated in order to direct it toward areas with greater potential for competitive entry as well as areas with greater revenue producing ability and services with higher earning potential. Such is the requirement to meet competition in these areas.

Jeopardy to Essential Services.

Granting ETC status to Western Wireless may directly impact the rates paid by customers in Range's service area or even leave them without basic dial tone. As the Company's market is eroded, its earnings will drop necessitating increases in its rates or ultimately withdrawing from the market. As it is uncertain what level of market erosion might occur, scenarios assuming a market loss of 20%, 30% and 40%. [29] are provided. Evident from the information below is the fact that should Western Wireless gain a significant portion of the market, Range would either be unable to remain financially viable or would have to raise local service rates for its remaining customers. Earnings levels at each of these respective competitive penetration rates would be 5.54%, 3.18%, and 0.82% respectively. Given these revenue losses, Range would need to increase its average local service rates for the remaining customers by 6.27%, 82%, and 183% respectively in order to maintain a compensatory return. Should Range not be able to increase these local rates and if Western Wireless is not able to provide services to these remaining customers, then there is a very real potential that these customers would be without dial tone services. Clearly provided in the Section 254(b)(1) of the Act is the requirement that quality services should be available at just reasonable, and affordable rates.

[29] Please note that this revenue loss reflects the prospective percentage loss in local, intrastate access, and Federal USF revenue only. Interstate revenues were held constant as these revenues are based upon cost and we have assumed costs will remain even in the face of lost customers. Interstate revenues for the Company are a fairly large portion of its total revenue stream.

Availability of Advanced Services.

In addition, Section 254(b)(2) and (3) both refer to access to advanced services. Approximately 40% of the customers currently served by the Company utilize facsimile /Internet connections or both. The ability of cellular carriers to provide these services is suspect. The ability of these carriers to provide further advanced services such as DSL is even more limited. Although these services are not supported directly by the USF mechanism, the ability to provide them is. A portion of the cost of the USF mechanism is designed to promote a network whereby advanced services can be supplied to rural areas. This cost is incorporated into the support provided to Range through their cost of service as reported to USAC.

Because the USF mechanism allows Western Wireless to receive the same support as the incumbent, they will be paid for this capability, even though they do not provide this level of supported services. The adverse impact is twofold: 1) customers in the Company's service area may be deprived of the availability for advanced services; and 2) Western Wireless will be paid for a capability which they do not render. The FCC has been apprised of this situation in other proceedings such as the petition by the Kansas Independent Telcos for designation of Western Wireless' service as "fixed" cellular and not CMRS services. RUS comments in this related proceeding are very applicable in this instance and should be included in the record here. A copy of the RUS comments in this proceeding, which identify the potential harm to rural areas, is attached as Exhibit 2.

Competitive Neutrality

The Independents also believe that the Commission Order is not competitively neutral. The Order indicates that, "In the Universal Service Order, the Commission concluded that universal service support mechanisms and rules should be competitively neutral".[30] The Commission concluded that the principles of competitive neutrality include technological neutrality. Thus, a common carrier using any technology, including CMRS, may qualify for designation so long as it complies with the section 214(e) eligibility criteria."[31] The Independents request clarification on how taking one particular piece of regulation (USF Support) from the multitude of regulatory requirements faced by ILECs, and applying only that single regulatory condition to Western Wireless or any entrant, can be considered in any way, competitively neutral.

Finally, the Independents would like the Commission to clarify how providing Western Wireless with ETC status is competitively and technologically neutral when the incumbents are required to submit to such federal regulatory requirements as cost separations studies, USF cost justification, provide facilities for other providers' use (interconnection) as required by Section 251(c) of the Act, implement equal access, CALEA requirements, carrier of last resort obligations, file tariffs for such items as SLCs and access charges, provide E911, meet quality of service standards, file reports, as well as meet state requirements such as tariff filings for all services, reporting, quality of service standards,and meet data speed standards, and earnings reviews when carriers such as Western Wireless have no such requirements..

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[30]Ibid para.11

[31] Costs for services such as Cost Study Preparation, Revenue Estimates, NECA Tariff Filings, USF data submissions, and commission reporting are estimated to range from $20,000 to $50,000 annually. One time costs such as rate cases, tariff filings, compliance with regulatory requirements such as equal access may range as high as several hundred thousand dollars per occurrence.

These requirements have real costs to the ILECs that provide them. There are real dollars expended to meet these requirements. This has two detrimental and anticompetitive effects on the incumbent providers. First, investment dollars and expenses are made which Western Wireless is not required to make. This effectively puts the incumbent at a disadvantage to the extent these dollars are expended. For example, given two companies with identical costs; if company A is required to meet a regulatory requirement necessitating a $100,000 expenditure and company B is not, company A will have been competitively disadvantaged by $100,000. Second, as USF support for Western Wireless is being calculated on the costs of the incumbent, and a portion if not all of the costs discussed above may be included in developing USF support amounts. Western Wireless will be paid for these expenditures even though they have no underlying costs or do not provide the services. (i.e. if Company A from above is provided with $10,000 worth of support for its $100,000 expenditure, and Company B receives the same level of support as the incumbent A, then Company B will receive this $10,000 support also; even though it did not make the expenditure). Here Western Wireless would receive support for regulatory requirements they are not subject to. The effect is to give them support dollars for which there is no cost and therefore "free" dollars, which they can use to further their competitive advantage, or return to their stockholders in increased earnings. (i.e. Company A and B both have identical operating costs of $1,000,000. Company A has additional regulatory costs of $100,000 and additional support of $10,000. Company B has additional support of $10,000. The net result for Company A is a cost of $1,090,000, while the net result for Company B would be $990,000.)

CONCLUSION

The Order of the FCC grants Western Wireless ETC status in contravention of federal law. The Independents request reconsideration of the Order as the FCC has not adequately addressed the applicable criteria established by statute, specifically the public interest standard involved. The Order allowed for an enlargement of the original application without appropriate notice to the Intervenors, thus denying them the due process afforded by statute and regulation and preventing them from representing their interests. In addition, the Order nullifies the protections provided in the ACT to protect rural consumers, specifically in areas where state statutes are available to protect rural customers.

In granting Western Wireless ETC status, the FCC emphasized the interests of the competitive second provider to the detriment of existing service and customers. The FCC, in advocating a specific technological service to the disadvantage of existing service acted contrary to federal statue and regulation. The unfortunate result of the FCC action is to disadvantage Wyoming customers and put their existing service at risk.

WHEREFORE, the Petitioners, Chugwater Telephone Company, RT Communications, Inc., and Range Telephone Cooperative, Inc. request that the Commission reconsider its Order of December 22, 2000 in the above captioned matters and reverse or amend its determination consistent with the Communications Act and any amendment thereto.

RESPECTFULLY Submitted this 24th ~~day~~ of January 2001.

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